

FILED
EPA REGION VIII
HEARING CLERK

)	
IN THE MATTER OF:)	
)	COMBINED COMPLAINT AND
ACME CONCRETE PAVING, INC.)	CONSENT AGREEMENT
2124 East Broadway)	
Spokane, Washington 99202)	Docket No. CWA-08-2015-0025
)	

I. PRELIMINARY STATEMENT

1. Complainant, the United States Environmental Protection Agency, Region 8 (EPA or Complainant) and Respondent, Acme Concrete Paving, Incorporated (Respondent), by their undersigned representatives, hereby consent and agree as follows.

2. This proceeding is governed by 40 C.F.R. Part 22. This Combined Complaint and Consent Agreement (Consent Agreement) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and is executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

3. The EPA has jurisdiction over this matter pursuant to section 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g).

4. This Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon Complainant and upon Respondent, and Respondent's officers, directors, agents, successors and assigns. Each signatory to this Consent Agreement certifies that they are authorized to execute and legally bind the party they represent to this Consent Agreement.

5. For the purposes of this settlement only, Respondent admits the jurisdictional allegations contained herein and neither admits nor denies EPA's specific factual allegations and legal conclusions contained herein.

6. In any proceeding to enforce this Consent Agreement, Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in this Consent Agreement. Respondent further waives its right to appeal the Final Order in this matter.

7. Complainant asserts that settlement of this matter is in the public interest, and Complainant and Respondent agree that entry of this Consent Agreement and its incorporation into a Final Order without further litigation and without adjudication of any issue of fact or law will avoid prolonged and complicated litigation between the parties.

8. This Consent Agreement contains all settlement terms relating to civil penalties agreed to by the parties.

II. EPA'S GENERAL ALLEGATIONS

9. Respondent Acme Concrete Paving, Inc., was at all times relevant a company incorporated in the state of Washington. Respondent maintains its business offices at 4124 East Broadway, Spokane, Washington 99202.

10. Respondent is and was at all relevant times a "person" within the meaning of section 502(5) of the Act, 33 U.S.C. § 1362(5).

11. At all relevant times, Respondent was responsible for construction of the 32nd Avenue West – Phase II project between 7th Street West and 26th Street West for the City of Williston, North Dakota (32nd Avenue West – Phase II).

12. Sand Creek intersects 32nd Avenue West – Phase II. Sand Creek is a Class III stream in the State of North Dakota with designated uses of agricultural and industrial uses, secondary contact recreation, fish and aquatic biota, and wildlife use. Sand Creek is a “water of the United States” within the meaning of 33 C.F.R. § 328.3(a) and therefore a “navigable water” within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).

13. Section 301(a) of the Act prohibits the discharge of pollutants into navigable waters of the United States, unless it is in compliance with a permit issued pursuant to the Act. 33 U.S.C. § 1311(a).

14. Section 402 of the Act establishes the National Pollutant Discharge Elimination System (NPDES) program, which is administered by EPA or a state with an approved permit program. The NPDES program authorizes the permitting authority to issue permits allowing discharges into navigable waters, subject to specific terms and conditions. 33 U.S.C. § 1342. The regulations further defining requirements for NPDES permits for storm water discharges associated with industrial activity are found at 40 C.F.R. Part 122.

15. The State of North Dakota implements a NPDES permit program that is approved by EPA. North Dakota may issue permits authorizing certain discharges into navigable waters.

16. Section 402(p)(3)(A) of the Act requires dischargers of storm water associated with an industrial activity to navigable waters to comply with the requirements of a NPDES permit. 33 U.S.C. § 1342(p)(3)(A).

17. Storm water discharges associated with construction activity are included in the definition of industrial activity subject to permitting requirements. 40 C.F.R. § 122.26(b)(14)(x).

18. The North Dakota Department of Health (NDDH) issued a general NPDES permit authorization for storm water discharges associated with construction activities, number NDR105966, on or about August 30, 2013, for 32nd Avenue West – Phase II jointly to the City of Williston and Respondent (Permit).

19. The Permit requires, among other things, that: Respondent develop and implement a storm water pollution prevention (SWPP) plan that contains specific elements; conduct regular specified storm water inspections; and implement best management practices (BMPs) at 32nd Avenue West – Phase II. BMPs include structural controls (such as storm drain inlet protection) and management

practices (such as minimizing any off-site pollutant discharges). Respondent completed a SWPP plan for 32nd Avenue West – Phase II dated August 21, 2013.

20. Authorized EPA employees entered 32nd Avenue West – Phase II with the consent of Respondent on July 18, 2014, to inspect it for compliance with the Act, permit and regulations (Inspection).

21. On or prior to the date of the Inspection, sediment had been discharged into Sand Creek as a result of construction activities taking place where 32nd Avenue West – Phase II crosses Sand Creek.

22. As of the date of the Inspection, Respondent had failed to comply with the following Permit requirements in violation of 33 U.S.C. § 1342 of the Act:

- a. The requirement in paragraph II.C.7.a that the SWPP plan be signed and certified;
- b. The requirement in paragraph III.A that site inspections be performed and recorded at least once every 14 calendar days and within 24 hours after any storm event of greater than 0.50 inches of rain per 24-hour period during active construction;
- c. The requirement in paragraph III.B that a copy of the signed Notice of Intent for coverage under the general permit, coverage letter from the NDDH, SWPP plan, and the general permit be kept on the site of the construction activity or with an individual responsible for overseeing implementation of the SWPP plan;
- d. The requirement in paragraph II.C.1 that the following be incorporated into the SWPP plan and site map: i) identification of post-construction controls specific to the site, ii) the location of the surface water body receiving stormwater discharges, iii) stormwater outfalls that would discharge to a surface water, and iv) the equipment staging area at the northwest corner of 32nd Avenue West and 11th Street West;
- e. The requirement in paragraph II.C.2.f that concrete truck wastewaters be washed out off-site, in accordance with Respondent's SWPP plan;
- f. The requirement in paragraph II.C.3.a that appropriate sediment controls be installed in disturbed areas, including graded slopes along the receiving water body; and
- g. The requirement in paragraph II.C.3.b that temporary or permanent erosion protection be implemented in exposed soil areas where activities have been completed, including graded slopes along the receiving water body.

III. DESCRIPTION OF VIOLATIONS

23. Respondent discharged a pollutant into a water of the United States from 32nd Avenue West – Phase II, in violation of the permit, and thus 33 U.S.C. § 1311(a) of the Act.

24. Respondent's failure to comply with the requirements described in paragraph 22 above are violations of 33 U.S.C. § 1342 of the Act.

IV. CIVIL PENALTY

25. Pursuant to 33 U.S.C. § 1319(g)(2)(B), and after consideration of the facts of this case as they relate to the factors set forth in 33 U.S.C. § 1319(g)(3), the EPA has determined that a civil penalty of \$30,962.00 is appropriate to settle this matter, and is to be paid within thirty (30) days of receipt of the Consent Agreement and signed Final Order issued by the Regional Judicial Officer.

26. Respondent consents and agrees to the assessment and payment of the civil penalty in the paragraph immediately above for settlement purposes.

27. Respondent shall pay the agreed upon civil penalty by one of the following methods:

a. **Payment by cashier's or certified check:**

A cashier's or certified check, including the name and docket number of this case, for \$30,962.00, payable to "Treasurer, United States of America," to:

If remitted by regular U.S. mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Contact: Craig Steffen; 513 487 2091; steffen.craig@epa.gov

b. **Wire Transfer**

Any wire transfer must be sent directly to the Federal Reserve Bank of New York using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary: US Environmental Protection Agency

c. **Online Payment remitted through the Automated Clearing House**

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
Contacts: REX (Remittance Express): 866-234-5681

Copies of the check or record of payment shall be sent with a transmittal letter identifying the case title and docket number to:

Michael Boeglin
U.S. Environmental Protection Agency (8ENF-W-NP)
1595 Wynkoop Street
Denver, CO 80202-1129

and

Tina Artemis
Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
1595 Wynkoop Street
Denver, CO 80202-1129

28. In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (i.e., on the first late day, 30 days of interest will have accrued).

29. In addition, a handling charge of fifteen dollars (\$15.00) shall be assessed the 31st day from the due date of the payment, and for each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

30. The penalty specified above, represents civil penalties assessed by the EPA and Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

V. OTHER TERMS AND CONDITIONS

31. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.

32. Nothing in this Consent agreement shall be construed as a waiver by Complainant of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

33. This Consent Agreement shall be subject to a public comment period of not less than forty (40) days pursuant to section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45 and also shall be subject to a period of consultation between EPA and NDDH of not less than forty (40) days pursuant to section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b). The public comment and consultation periods may run concurrently. The EPA may modify or withdraw its consent to this Consent Agreement if comments received disclose facts or considerations which indicate that the Consent Agreement is inappropriate, improper or inadequate.

34. If comments received do not require EPA to modify or withdraw from this Consent Agreement, the parties agree to submit this Consent Agreement to the Regional Judicial Officer following the later of the closure of the public comment period specified in 40 C.F.R. § 22.45 and the period for state consultation specified in 40 C.F.R. § 22.38(b), with a request that it be incorporated into a Final Order.

35. This Consent Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the civil penalty owed for violations alleged in this Consent Agreement. This Consent Agreement resolves Respondent's liability for federal civil penalties under section 309(d) and (g) of the Act, 33 U.S.C. § 1319(d) and (g), for the violations alleged in this Consent Agreement. This Consent Agreement shall not in any case affect the EPA's right to pursue criminal sanctions for any violations of law whether or not alleged in this Consent Agreement.

36. Each party shall bear its own costs and attorneys' fees in connection with all issues associated with this Consent Agreement.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 8
Complainant

Date: 8/18/15



Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

ACME CONCRETE PAVING, INC.
Respondent

Date: 8-14-2015



Robert Seghefi
Vice President
Acme Concrete Paving, Inc.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8
1595 Wynkoop Street, Denver, CO 80202-1129**

**PUBLIC NOTICE OF PROPOSED COMBINED COMPLAINT AND CONSENT
AGREEMENT AND OPPORTUNITY TO COMMENT ON CLEAN WATER ACT
COMPLAINT**

Action: EPA is providing notice of a proposed combined complaint and consent agreement (Agreement) and the opportunity to comment on the proposed Agreement for alleged violations of the Clean Water Act (the Act) at the 32nd Avenue West – Phase II road construction site located in Williston, North Dakota. The construction site was subject to the North Dakota Department of Health's (NDDH) general permit for discharge of storm water associated with construction activities (NDPDES Permit No. NDR10-0000).

Summary: EPA is authorized by section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2), to issue an order assessing a civil administrative penalty for violations of certain provisions of the Act, after providing (1) an opportunity for the persons to be assessed the penalty (the Respondent) to request a hearing to contest the penalty, and (2) notification to the public of its rights to submit written comments and to participate in any hearing. The deadline for the public to submit comments is thirty days after issuance of this notice.

On August 18, 2015, EPA commenced a civil administrative action by settling an administrative complaint against the Respondent identified below, alleging violations of section 301(a) of the Act, 33 U.S.C. § 1311(a), or of any permit condition or limitation implementing such section. Pursuant to section 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4), EPA hereby notifies the public of EPA's proposed penalty assessment against:

Acme Concrete Paving, Inc.
2124 East Broadway
Spokane, WA 99202

EPA Docket Number: CWA-08-2015-00025

Proposed penalty in the Agreement: \$30,962.00

Alleged violations: 1) failure to develop and implement a complete storm water pollution prevention plan; 2) failure to implement and maintain site best management practices; 3) failure to conduct and document inspections; and 4) failure to keep required documents on-site.

PUBLIC COMMENTS

Written comments on the Agreement are encouraged and will be accepted at the address listed below for a period of thirty (30) days after the publication of this notice. Written comments submitted by the public as well as information submitted by respondent will be available for public review, subject to the provisions of law restricting the disclosure of confidential

information. Any person submitting written comments has a right to participate in a hearing, if one is held. The Agreement is available for review between 9:00 a.m. and 4:00 p.m. at the address listed below and on the internet at: <http://yosemite.epa.gov/oa/rhc/epaadmin.nsf>.

Please submit written comments to:

Tina Artemis (8RC)
Regional Hearing Clerk
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129.
Telephone: (303) 312-6765

FOR FURTHER INFORMATION: Persons wishing to receive a copy of the Agreement or other documents in this proceeding (such as the regulations in 40 C.F.R. part 22, which establish procedures for the hearing), or to comment upon the proposed penalty assessment or upon any other aspect of the matter, should contact the Regional Hearing Clerk identified above. No action will be taken by EPA to finalize a settlement in this matter until 30 days after this public notice.